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**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW**

**Case Law Bulletin**

Week of June 26, 2017

**Fourth Circuit**

[United States v. Reid](#), No. 16-4325, 2017 WL 2782624 (4th Cir. June 28, 2017) (ACCA-COV)

The Fourth Circuit affirmed the district court, finding that a conviction under Virginia Code § 18.2-55 (bodily injury caused by prisoner) is a COV under the ACCA force clause at 18 U.S.C. § 924(e)(2)(B)(i).

**Fifth Circuit**

[Herrera Morales v. Sessions](#), No. 15-60761, 2017 WL 2772572 (5th Cir. June 27, 2017) (PP)

The Fifth Circuit denied the PFR, affirming the Board's denial of asylum, withholding of removal and CAT. The court held that past persecution experienced by the petitioner's mother cannot be imputed to the petitioner, a 10 year-old girl from El Salvador. The court further held that the petitioner's receipt of a single threat of harm does not constitute past persecution.

**Ninth Circuit**

[United States v. Perez-Silvan](#), No. 16-10177, 2017 WL 2784971 (9th Cir. June 28, 2017) (USSG-COV)

The Ninth Circuit affirmed the district court, holding that Tennessee Code Annotated § 39-13-102(a) (aggravated assault) is divisible and that a conviction thereunder can be considered a crime of violence under the element prong of U.S.S.G. § 2L1.2(b)(1)(A)(ii) when the action results in "serious bodily injury" or involves the "use[ ] or display[ ] of a deadly weapon."

[United States v. Calvillo-Palacios](#), Nos., 16-10039, 16-10077, 2017 WL 2784963 (9th Cir. June 28, 2017) (USSG- COV)

The Ninth Circuit affirmed the district court, holding that Texas Penal Code § 22.02(a) (aggravated assault) is categorically a crime of violence under the element prong of U.S.S.G. § 2L1.2(b)(1)(A)(ii).

**Tenth Circuit**

[Sione v. Sessions](#), No. 16-9540, 2017 WL 2799862 (10th Cir. June 28, 2017) (unpublished) (Motion to Remand; IAC)

The Tenth Circuit denied the PFR, concluding that the BIA did not abuse its discretion in denying petitioner's motion to remand since she did not comply with the Lozada requirements and she did not provide sufficient evidence that her former attorneys provided ineffective assistance of counsel.

**Eleventh Circuit**

[Ovalles v. United States](#), No. 17-10172, 2017 WL 2829371 (11th Cir. June 30, 2017) (ACCA-COV)

The Eleventh Circuit affirmed the district court's denial of petitioner's motion to vacate her conviction, concluding that petitioner's conviction for attempted carjacking, in violation of 18 U.S.C. § 2119(1) constitutes a crime of violence under both the use-of-force clause at 18 U.S.C. § 924(c)(3)(A) and the risk-of-force clause at 18 U.S.C. § 924(c)(3)(B). In doing so, the Eleventh Circuit joined the Second, Sixth and Eighth Circuits in holding that the Supreme Court's void-for-vagueness ruling in *Johnson v. United States*, 135 S. Ct. 2551 (2015), does not apply to the risk-of-force clause in 18 U.S.C. § 924(c)(3)(B).